Roadway Express, Inc. *and* **Saint Elmo Bell, Jr.** *and* **Albert T. Wilson** *and* **William Jerry Howard.** Cases 10-CA-15074, 10-CA-15149, 10-CA-15568, 10-CA-15711, 10-CA-15158, and 10-CA-15503

September 8, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On April 14, 1981, Administrative Law Judge Abraham Frank issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Roadway Express, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

ABRAHAM FRANK, Administrative Law Judge: The original charge in this consolidated case was filed on October 1, 1979. Thereafter, additional charges were filed on various dates to and including April 9, 1980. Complaints and orders consolidating the cases issued from November 2, 1979, to and including April 11, 1980. In its final form, the consolidated complaint alleges violations of Section 8(a)(1), (3), and (4) of the Act. The hearing was held from April 23 to April 25, 1980, inclusive, at Atlanta, Georgia. All briefs filed have been considered.[1]

[1] Respondent's motions to reopen the record and to defer to decisions of the Multi-State Grievance Committee with respect to allegations of the complaint that Saint Elmo Bell, Jr., was unlawfully suspended on April 1, 1980, and discharged on April 9, 1980, are denied. Apart from other considerations (See *James Banyard* v. *N.L.R.B.*, 505 F.2d 342 (D.C. Cir. 1974), deferral is inappropriate where, as here, the complaint alleges, in part, that Bell was suspended and discharged because he filed charges with the Board against Respondent.

At issue in this case is the question of whether Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights by issuing disciplinary warning letters to several employees. Also at issue is the question of whether Respondent discriminated against an employee by suspending and finally discharging him because of his union and concerted activities and because he filed charges with the Board against Respondent.

FINDINGS OF FACT

I. PRELIMINARY FINDINGS AND CONCLUSIONS

Respondent Roadway Express, Inc., a Delaware corporation, with a terminal and office located at Atlanta, Georgia, the only facility involved in this proceeding, is engaged as a common carrier by motor vehicle in interstate transportation of freight. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE FACTS

A. *The Collective-Bargaining Agreement and Respondent's Work Rules*

At all times material herein Respondent and the Union have been parties to collective-bargaining contracts covering Respondent's over-the-road and local freight forwarding, pickup, and delivery employees.

Article 16 thereof sets forth the terms and conditions under which employees may refuse to operate Respondent's vehicles, with particular emphasis on the safe operation of such vehicles.

Section 1 provides, *inter alia*, that employees are not required to operate vehicles that are in unsafe operating condition. A refusal by an employee to operate such equipment is not a violation of the contract unless the refusal is unjustified. "All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After equipment is repaired, the Employer shall place on such equipment an 'OK' in a conspicuous place so the driver can see the same."

Section 2 provides that employees are not to be required or assigned to engage in "any activity involving dangerous conditions of work or danger to persons or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment."

Section 4 provides that employees shall immediately, or at the end of their shift, report all defects of equipment. . . . "The Employer shall not ask any other employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department."

Articles 7 and 8 provide for local area and national grievance machinery to resolve disputes and grievances arising under the contracts and supplements thereto.

Article 45, section 1, of the Southern Area Conference Motor Freight Supplemental Agreement provides, *inter alia*: "Appeal from discharge, suspension or warning notice must be taken within ten (10) regular working days by written notice, and a decision reached within fifteen (15) days from the date of discharge, suspension or warning notice."

It is Respondent's policy to issue warning letters to employees for conduct deemed to be objectionable or contrary to company rules. Two or more such letters for the same offense may result in discharge. Letters remain in an employee's personnel file, but are not considered for disciplinary purposes after 6 months.

An employee who receives a warning letter may file a grievance to protest its issuance. The Union will mail the protest to the Employer, meet with the Company and attempt to have the letter withdrawn. In the event the Company refuses, the protest stands against the letter. No further steps in the grievance procedure are followed unless the warning letter also involves a loss of pay. Where a second letter is issued for the same type of offense an employee may be disciplined up to discharge. If the employee is suspended or discharged, the entire matter, including the earlier offense, will be considered by the Southern Multi-State Grievance Committee in the final steps of the grievance procedure.

Under rules of the Department of Transportation (DOT), drivers are required to inspect their vehicles before using them. As set forth above, the contracts provide that employees will immediately, or at the conclusion of their shifts, report all defects in equipment.

Pursuant to the terms of the contracts, the Multi-State Grievance Committee, composed of an equal number of representatives from the Union and the Employers, has an agreed-upon procedure to be followed when a driver reports that equipment assigned to him is unsafe to drive. Respondent's posted work rule directs the driver to write up a defective unit on a form provided by Respondent (M-11 for trucks: M-12 for forklifts). The driver delivers the unit to the garage supervisor on duty, usually a garage foreman. The driver may insist that a Class A mechanic inspect the vehicle. If the mechanic, upon inspection, finds that the vehicle is safe and operable, the driver is required to accept the unit and drive it. If he refuses he is subject to discharge.

Respondent has established a corollary work rule. When the driver delivers the unit to the garage foreman, the latter checks out the unit to determine if there is a problem. If he agrees with the driver's report, a mechanic is assigned to repair the unit. If the foreman finds no problem with the unit he so informs the driver. At that point the driver has two options. He can accept the foreman's opinion and continue his trip or he can insist that a mechanic, a member of the Union, inspect the unit. In the event the latter course is followed and the mechanic finds no defect in the unit the driver will receive a warning letter for the delay of the freight and the unnecessary expense incurred by the Company.[2] Each unit is inspected by a mechanic on the Safety Lane before it is ready for dispatch to make sure that it is road worthy. If, as a result of the driver's complaint, a defect is found in the unit, the mechanic who passed the vehicle as safe to operate is given a warning letter for failure to discover the defect before passing it through the Safety Lane. Drivers are paid for downtime in the event the vehicle is found to have a defect. Drivers are not paid for such time if no defect is found.

B. *The Warning Letter to Albert T. Wilson*

Wilson, a dock worker and driver, has been employed by Respondent since 1972. On September 7, 1979, Wilson received a warning letter from Driver Superintendent Al Southern for wasting time, with the comment that he would receive further discipline for any future occurrence of the same nature.

Based upon my observation of the witnesses on the stand and the natural and probable sequence of events, I find that the letter was issued by Southern in the following context: About a week prior to September 7, Wilson was issued a letter for mishandling freight. The parties agree that the letter was issued by Respondent in error. On September 5, Wilson showed the letter to Assistant Terminal Manager Sammy Harmon and Harmon agreed to investigate it. The next day Wilson again asked Harmon about the letter and whether it had been removed from his file. Harmon said either that he would take care of it or had taken care of it. Wilson thanked Harmon and left the office. However, Wilson was apparently unsatisfied with Harmon's response. The next day Wilson asked Foreman Roy Wood and Terminal Operations Manager William Young for a job steward to check on the disposition of the letter. They told him to find a steward himself. Wilson contacted Steward John Ellis. Together they then went to the City Dispatch Office and asked Southern for permission to see Wilson's

[2] Operations Manager Sasser testified that Respondent and the Union reached verbal agreement at the local level in the fall of 1977 that this procedure would be followed. Robert B. Edwards, a road driver for Respondent and a union steward during the 6-month period prior to the hearing, testified that the Union had agreed to a work rule establishing such a policy and posted by Respondent on Respondent's bulletin board. While denying that an actual agreement existed between the Union and Respondent, Assistant Business Agent John G. Honea testified that he was "sure" that a driver who had reported a vehicle to be unsafe would receive a warning letter if a Class A mechanic, upon inspection, found the unit safe and operable. In those circumstances, if the driver protested the warning letter "he wouldn't have a case," but the Union would take his protest and ask the Company to withdraw the letter. In the event a second warning letter for such an offense was issued to a driver with the discipline of suspension or discharge both letters would be considered through the grievance procedure. Resolving credibility, I conclude that the Union was at all times aware of Respondent's working rule as to such warning letters and did not object to the existence of the rule but reserved the right to consider each case on its individual merits in the event the enforcement of the rule resulted in a driver's suspension or discharge.

personnel file. Southern refused, directing them to continue checking with Harmon. Harmon was not at work that morning, September 7. Wilson and Ellis went to the office of Terminal Manager Carlton Shepherd and asked to see Wilson's file. Shepherd called for Office Manager Jerry Albertson, who was not familiar with the letter. At about that time Southern entered the office and Shepherd told Southern to let Wilson see his file. Wilson, Ellis, and Southern went back to Southern's office where Southern showed Wilson and Ellis a card from Wilson's file with the list of current warning letters. The list did not include the erroneous letter. Wilson was satisfied that the letter had been removed from his file. Shortly thereafter, Southern spoke to Harmon by phone and asked Harmon ahout Wilson's letter. Harmon said that he had already told Wilson that Harmon had taken care of the letter. Southern went out to the dock and asked Wilson whether Harmon had said that he had taken care of the letter. Wilson said, "Yes." Southern then issued Wilson the September 7 warning letter on the ground that Wilson had wasted 10–15 minutes of time talking to other management officials after Harmon had said that he had taken care of the erroneous letter.

C. *The Warning Letter to William Jerry Howard*

Howard, a driver, has been employed by Respondent for 3 years. On November 27, 1979, he was issued a warning letter pursuant to Respondent's practice of issuing warning letters to drivers who report defects in vehicles which, upon inspection by a mechanic, are found to have no defects.

Howard was dispatched from Atlanta to Memphis on November 23, 1979. After inspection of the vehicle assigned to him he wrote it up on Respondent's M-11 form, noting that the bottom brake shoe on the tag axle was sticking out from the hub, that the brake shoe was loose, and that air was leaking. He gave the write up to Garage Operations Manager W. E. Hartley. Howard testified that Hartley did not inspect the unit in Howard's presence, but read the writeup and told Howard that he would receive a warning letter for it. However, Hartley, with 14 years' experience as a supervisor of mechanics, foremen, tire people, and garage service employees, testified credibly that he did, in fact, check the unit when he received Howard's writeup. He operated the parking brake valve and found that it did not leak. He saw nothing wrong with the brakes. He then reported to Howard that there was no problem, but if Hartley had to assign a mechanic to inspect the unit Howard would probably receive a warning letter. Howard replied something to the effect that he did not give a damn, that he had a bushel of them.

The mechanic who inspected the unit in accordance with Howard's writeup wrote: "Brake was adjusted and in place—operates alright—parking brake operation is alright—released."

Both Hartley and Relay Manager Warren Sasser, who supervises the over-the-road drivers at the Atlanta terminal, testified that it was not unusual for truck brakeshoes to protrude somewhat from the edge of the drum, that there would be a little movement of the shoe due to wear. Hartley estimated that out of 10 trucks checked at random 50 percent would show the edges of the shoes on the front side. Sasser testified that 75 percent of the trucks would show one shoe of the four protruding.

D. *The Warning Letters and Discharge of Saint Elmo Bell, Jr.*

Bell, who was employed by Respondent since October 1962, in a variety of transportation duties, exercised his seniority in January 1979, to become a forklift operator at the Atlanta Terminal. Prior thereto he had been employed at Respondent's Conyers terminal. In December 1978, he filed unfair labor practices against Respondent, which resulted in a decision in his favor by an Administrative Law Judge. No exceptions were filed to that decision.[3]

Over the years, in addition to his letter of discharge dated April 9, 1980, Bell has received 55 warning or disciplinary letters, most of them involving charges of tardiness, failure to follow instructions, insubordination, and wasting time. Of these, 21 warning letters were issued in 1979 and 1980. Of the latter, six, dated May 8, 1979, July 26, 1979, August 28, 1979, January 2, 1980, March 4, 1980, and April 1, 1980, are alleged to be unfair labor practices in this proceeding.

1. The letter of May 8, 1979

On the morning of the above date, Bell arrived at work and checked out a forklift. After operating it briefly he noted that it was smoking. Bell complained to Dock Foreman Roy Wood, who told Bell to find another lift. Bell said it was not up to him to find a lift and he wanted to see a job steward. Wood told Bell a steward was not available at that time and that Bell should drive his lift until a steward arrived. Bell said he did not care if a steward arrived or not, that he was going to get Wood's ass. Wood determined that Bell had shown disrespect to Wood and wrote up the incident in a warning letter. The letter was thereafter signed by Terminal Operations Manager William Young and presented by Young to Bell. Bell denied using the language attributed to him and asked for the guidelines on insubordination. I credit Wood over Bell. The disputed language is similar to language admittedly used by Bell to Wood on another occasion. Moreover, on May 8, in relation to the same incident of the smoking forklift, Bell spoke rudely to Assistant Terminal Manager David Abercrombie, referring to him as "fat boy." Bell received a second warning letter for his disrespect to Abercrombie. This letter is not alleged to be an unfair labor practice.

2. The letter of July 26, 1979

On the above date at 5:55 a.m., Bell parked his lift next to a stairway leading to a restroom. He signaled Foreman Wood and Wood acknowledged the signal that Bell was taking a head break. Alerted by Young to Young's concern that Bell had been taking excessive head breaks, Wood checked his watch. Bell proceeded to the restroom, returning at 6:27 a.m. While going to and

[3] *Roadway Express, Inc.*, JD-858-79, adopted by the Board on January 24, 1980, unpublished.

from the restroom Bell talked to several employees and bought a cup of coffee for another employee. He did not recall how long his break lasted, but testified that it was no longer than other occasions. Breaktime for the employees was at 6:30 a.m.

At 8:25 a.m., Bell was called to Young's office. Steward Long was present. Young told Bell that Bell had taken 32 minutes for a head break, that it had cost the Company $5 and was excessive. Bell asked what the guidelines were for a head break. Young said there were no guidelines, but that he had to start somewhere. Young issued Bell a warning letter for wasting time.

On July 27, 1979, Bell testified in a Board hearing relating to the unfair labor practice charge he had filed against Respondent. Both Wood and Young denied that they had knowledge that Bell had filed an unfair labor practice charge at the Conyers terminal.

3. The letter of August 28, 1979—the refusal to pay overtime

On the above date, Bell was directed by Wood to move some damaged freight that had to be rebanded or "recoopered." This process required the assistance of another employee to physically handle the freight before it could be moved. Bell had not finished this assignment when Wood had another job for Bell at another location. When Bell returned, he was directed to resume the recoopering work with no helper. Under Respondent's work rules, a senior employee, such as Bell, is not required to do less desirable work if a junior man is available. Bell protested the assignment and said that he wanted to see a job steward. However, he got on the forklift and moved some bundles. Wood called the Outbound dock for a steward and found that there would be no steward available until 7 a.m. Informed of this fact, Bell suggested that Wood call a steward at home, but Wood refused to do so. In the course of the conversation, Bell told Wood that Wood thought he was God and Bell was going to show Wood and was going "to put some papers on your ass."

At 9:25 a.m., Bell and Steward Hinson were called to Young's office. Bell was handed three warning letters, one for insubordination to Wood as a result of Bell's above comment to Wood, another for tardiness, and a third for negligence. Young accepted Bell's explanation for being tardy and rescinded that letter. Apparently, the letter for negligence was also rescinded for Bell's record shows only one warning letter dated August 28, 1979. Young told Bell that disrespect to a supervisor was insubordination and presented Bell with a warning letter for that reason. During the course of the conversation Young said that Bell was a fine employee, but his extracurricular activity was the problem. Bell asked if Young was talking about Bell going to the Labor Board and Young replied, "No. I'm not referring to anything of that nature." Young was aware that Bell was working weekends at other freight lines and believed Bell could have been taking excessive head breaks for that reason. However, Young told Bell that Young did not stay around off the clock to see what activities Bell engaged in.

The grievance conversation lasted until about 9 a.m. At that time Bell told Young that Bell had not yet written up his forklift. Young told Bell to punch in, write up the forklift, and punch out. Bell did as instructed. When Bell reported for work the next morning his timecard had been altered from 8.7 regular hours and .7 overtime to 8 hours only. Bell had been paid overtime for time spent discussing his grievance relating to the May 8 warning letter. Company officials testified that it is company policy not to pay overtime for discussions relating to grievances. Time so spent is only payable during the employee's normal hour shift.

4. The forklift blade controversy

A forklift of the type used at Respondent's Atlanta terminal is an engine powered industrial lift truck designed to move freight by positioning two forks or blades under the freight and, with the weight of the freight on the blades, elevating the blades and the load for transportation on the dock from one location to another, including trailers. The blades attach to the carriage and can be adjusted by the operator to be closer together or further apart to accommodate different loads and movements. There is a center opening or gallery on the carriage through which the blades are installed. Clips hold the blades to the carriage in notches spaced at regular intervals.

The Atlanta terminal utilizes nine forklifts, eight of them of Datsun manufacture and one of Clark manufacture. Except for one set of Clark blades, the blades are from Datsun. All of the forklifts at the Atlanta terminal, carry an Industrial Truck Association (ITA) Class 2 carriage, handling weights from 2,000 to 5,000 pounds. At least one manufacturer of forklift blades makes blades for both Datsun and Clark forklifts. The blades come in different lengths, ranging from 42 inches to 60 inches. However, a Class 2 ITA carriage will accommodate a Class 2 blade. Except for the length, there is no difference between a Class 2 Datsun blade and Class 2 Clark blade. Both Datsun and Clark forklifts are designed to use forklift locking pins. The pins are small bolt like objects, attached to springs. They fit into the blades to prevent them from sliding on the carriage. With or without the pins, bolts or washers bolted or welded to the ends of the carriage prevent the blades from sliding off the carriage. The forklift locking pins permit the operator to adjust the blades without getting off the forklift to move them physically by kicking them into the proper notch.

Respondent's "Forklift Training Manual," issued in January 1890, revised its previous manual by providing in the Operator's Daily Report a column for inspection entitled, "Attachments secured pin in blades." Prior to the fall of 1979, the forklift operators at the Atlanta terminal drove their lifts without pins.

On September 24, 1979, Bell was operating a forklift without forklift locking pins. A blade came out of its slot and was riding on the carriage over the entry gallery. When Bell attempted to position the blade properly, it slid down and caught his finger between the blade and the carriage, injuring several fingers. Upon his return to work after recuperating from his injury, Bell began writing up forklifts because the blades were not secured in place.

From January 1980 to his discharge in April 1980, Bell continued to write up forklifts because of such problems. On a number of occasions, management officials attempted to persuade Bell that his writeup of the forklifts was unnecessary, that the forklifts were safe to operate despite the fact that the blades would move to some extent when kicked. Bell, however, took the position that the forklift was unsafe to operate if the blade moved at all when the pin was in place. Terminal Operations Manager Al Harrelson explained to Bell that the blades on all the forklifts would slide with no weight on them if kicked at the bottom. The weight of the skids, however, would hold the pins in position and there would be no excessive movement of the blades.

On January 4, 1980, Bell, upon his request, met with Respondent's Safety Supervisor Richard Danford. Bell asked Danford what the Company's policy was with respect to the locking pin on the forklift blade. Danford told Bell that the pins should be in the blades. If some blades did not have pins attached or secured in the blades the operations manager or the dock foreman should allow the operator to change blades or forklifts so that there would be locking pins on the blades. However, if other blades or forklifts were not available, the lift should not be deadlined (removed from service for repairs) because of the absence of pins, but it should be operated with caution.

5. The letter of January 2, 1980

On the morning of January 2, Bell reported for work and deadlined two forklifts for lack of pins or adequate locking. A third lift could not be started. Dock Foreman Rocky Allen Davis assigned Bell to a fourth forklift, which was being operated by employee Reeves. Reeves was assigned to one of the units deadlined by Bell, which Bell observed. The fourth lift required fuel. Davis accompanied Bell to the fueling area and stood by while Bell fueled the lift. Bell carried on a one-sided conversation during the course of which he told Davis that Davis should not have placed Reeves on the deadlined unit, that Roadway had a history of safety environment, and that Bell could sue management supervisors because they were on profit sharing. Davis told Bell to be quiet. Bell responded that it was just tough shit; he could say anything he wanted to. Davis said that Bell had been disrespectful and would receive a warning letter for insubordination.[4]

6. The letter of March 4, 1980

On the morning of the above date, Bell was assigned a forklift and fueled it for oil. Davis directed Bell to door 112. About 15 minutes later, Davis observed Bell writing up the lift. Bell told Davis that the blades were insecure, that the pins did not secure the blade adequately. Bell kicked the bottom of the blade and the blade slid over a notch or two. Davis checked the forklift and made sure that the pins would go up and down and lock. Davis told Bell that the blades were safe and operable and he was to report to door 112 with the forklift. Bell refused to drive the lift. Davis called Harmon. In the interim Harrelson appeared and asked what the problem was. Harrelson checked the pin, kicked the blade from the top, and showed Bell the weld bars at the ends which prevented the blades from sliding off the carriage. Harrelson told Bell the lift was safe and instructed Bell to go to door 112. Bell requested a union steward. Davis contacted Steward Carlos Conn. Harmon also checked the forklift and told Bell the unit was safe to operate. Harmon explained to both Bell and Conn that the unit was safe, that the blades would only move if they were kicked at the bottom. They would not move if kicked at the top. When the freight was placed on the forks, the forks would be permanently seated and would not slide back and forth. The pins were merely a convenience for the lift driver. Conn said that he had seen blades slide off the carriage. Harmon agreed that had been possible, but that the metal strips of angle iron prevented accidents of this type. Conn said, "Yes, you're right." Bell, however, was not persuaded that the lift was safe to operate and refused to drive it. The discussions lasted for about 1 hour. Finally, Harmon discharged Bell.

The next day, the forklift was inspected by mechanic Fred. W. Piper. Piper told Hartley that the Datsun lift had Clark blades and he would not drive it on the dock. There was considerable wear in the slots that held the blades, and the blades were loose. Piper testified that he did not know whether the dimensions of the Clark blades were different from those of the Datsun blades, but assumed they were because the parts numbers on the blades were different.

Harmon, Shepherd, and Danford discussed Bell's discharge. In view of Piper's doubts as to the safety of the vehicle and the fact that Bell was an 18-year employee, they decided that his discharge should be reduced to a three-day suspension for wasting time. Bell was notified of the reduced discipline.

Respondent also took steps to investigate thoroughly the issue of the safety of the forklift if operated without pins and the question of the interchangeability of Clark and Datsun blades. On March 5, 1980, representatives from Datsun and Clark came to the terminal. The latter told Shepherd that he would not recommend using a Datsun blade on a Clark lift. The Datsun representative did not know the answer. About a week later, as a result of discussions with higher supervision in the Clark and Datsun organizations, including a design engineer at Datsun, Respondent's officials determined that Class 2 Clark and Datsun blades were interchangeable on a Class 2 carriage and the pins were not a safety item.

7. The letter of April 1, 1980

On the morning of the above date, Bell reported for work and was assigned to the Outbound dock as a senior operator. He checked out the first lift assigned to him and wrote it up as inoperative. Bell was pushed on the

[4] In connection with this incident Bell filed a grievance with the Union on January 11, 1980, alleging that Respondent had failed to follow its own safety procedure by requiring Reeves to operate a forklift that had just been deadlined by Bell. The grievance was settled with the understanding that the Company would not expect another employee to drive an unsafe piece of equipment. However, according to Terminal Manager Carlton Shepherd, he took the position, without objection from the Union, that Respondent did not consider the pins to be an unsafe matter.

first lift to the Inbound dock where he was assigned to lift 3115. Bell reported to Davis that lift 3115 was low on oil and water and the blades were insecure. Bell said there was another lift on the dock and asked Davis why the Company was discriminating against him by choosing a lift for him and not for everyone else. Davis said he was not aware that another lift was available, that Bell could drive that lift if he wanted to or he could put oil and water in unit 3115 and even change the blades, but it was 45 minutes after Bell's starting time and Davis wanted Bell to get on a lift and get back to Outbound. Bell drove lift 3115 about 100 feet to the third lift, which had no defects. However, instead of driving the latter lift to Outbound, Bell insisted on writing up unit 3115 on the ground that it was his responsibility under the contract and Respondent's manual. Harrelson appeared and joined Davis in instructing Bell to report to Outbound without writing up unit 3115. Harrelson told Bell that Bell had not handled any freight with that unit and if there were any problems with it, the next operator could write it up, that Harrelson would have it checked out. Finally, after about 20 minutes of argument, Bell drove the third lift to Outbound. Bell received a letter of discharge for wasting time.

Subsequently, Shepherd reduced the discharge to a 3-day suspension on the ground that Bell had not actually refused an order. Bell's conduct in wasting time was not so serious an offense to warrant discharge of an 18-year employee.

8. The letter of April 9, 1980

On April 8, mechanic Piper performed a preventive maintenance check on forklift 3102. About 1:12 p.m. he finished his inspection and repair of the unit and signed it as safe to go back into service. He testified that the lift was a Datsun lift with Datsun blades and Clark pins. He parked the lift outside the garage. At 11 p.m. on April 8, Dock Foreman Ricky R. Beasley sent an employee from the Outbound dock to the garage to pick up unit 3102. The employee returned with that unit about 11:30 p.m. Between March 20 and April 7, 1980, unit 3102 had been written up on five occasions. On four of those occasions it had been written up by Bell. On April 7, 1980, the last occasion, Bell had noted that the blades were not of Datsun manufacture.

On April 8, 1980, Bell reported for work at midnight. He was sent to the Outbound dock and assigned by Beasley to unit 3102. Bell immediately wrote up the lift. Bell testified that the unit was exceptionally clean, with new oil and plenty of coolant, but he noted in his writeup that the pin would not hold the blade; the mast had oil presence; the blades were not of Datsun manufacture, but the unit was a Datsun unit. With respect to the latter problem, Bell testified that the blades came from the Conyers terminal and he "believed" they were obtained from a manufacturer he identified only as "JMP in Lithonia." Bell put the writeup on Beasley's desk. Beasley read it. Beasley told Bell that the lift had just returned from the garage and in Beasley's and the garage's opinion the lift was safe to drive. Beasley instructed Bell to drive the lift. Bell refused on the ground that the lift was not safe to drive. Beasley consulted with Terminal Operations Manager Joe Bass and returned to again order Bell to drive the lift. Bell again refused. Beasley told Bell that if he continued to refuse to drive the lift he would face disciplinary action. Bell requested a union steward and Steward Conn was called to the site. Bell and Conn spoke together for about 6 or 7 minutes. They then entered Bass' office. Bell told Bass that the forklift was unsafe and he would not drive it. Bass discharged Bell.

Immediately thereafter, Bass called Garage Operations Manager Woody Coheley and asked him to bring a mechanic to check out a forklift. About 5 minutes later Coheley appeared with mechanic Donald W. Spears. Spears read Bell's writeup of unit 3102 and checked the unit. He operated the lift and checked the pins. Both pins were locking. The blades were not of Datsun manufacture. They were longer blades and did not have a part number stamped on them. Spears wrote on Bell's writeup: "no safety defects noted. Inspected April 9, 1980." Spears and Coheley both signed the above statement.

Analysis and Final Conclusions of Law

1. I conclude that Respondent violated Section 8(a)(1) of the Act by issuing a warning letter to Albert T. Wilson on September 7, 1979, with the threat of further discipline for the same conduct.

It is well settled that an employee attempting to enforce a contract right is engaged in concerted protected activity within the meaning of Section 7 of the Act. *N.L.R.B.* v. *Interboro Contractors, Inc.*, 388 F.2d 495, 500 (2d Cir. 1967); *N.L.R.B.* v. *Ben Pekin Corporation*, 452 F.2d 205, 206 (7th Cir. 1971). As set forth above, article 45, section 1, of the Over-the-Road Supplemental Agreement provides for an appeal of a warning letter within 10 days of its issuance. About a week prior to September 7, 1979, Wilson was mistakenly issued a warning letter for mishandling freight. On several occasions he called the matter to Harmon's attention. Assuming, without deciding, that Harmon said he had taken care of the matter, Wilson was apparently unwilling to take Harmon's word that the erroneous letter had, in fact, been removed from his file. Although the warning letter involved no loss in pay, a second letter for the same offense could result in Wilson's discharge. He was therefore understandably and reasonably anxious to have the matter rectified with certainty. Harmon was not at work on the morning of September 7. Pursuing his meritorious grievance, Wilson asked his foreman for a union steward and was told to find one himself. He found Steward Ellis and together they went to Southern's office. Here the whole matter could have ended with no waste of anyone's time. However, for some inexplicable reason Southern refused to show Wilson his file until ordered to do so by Shepherd. In these circumstances, to discipline Wilson solely for the reason that he continued to pursue a grievance to a final conclusion cannot be defended on the ground that Wilson rather than Southern was wasting Wilson's time and that of other management officials. I find that by such conduct and by threatening further discipline for the same reason Respondent violated Section 8(a)(1) of the Act.

2. I conclude that Respondent violated Section 8(a)(1) of the Act by issuing a warning letter to William Jerry Howard on November 27, 1979.

An employee who exercises his contractual right to refuse to work under conditions he believes to be unsafe is engaged in protected concerted activity under Section 7 of the Act regardless of the wisdom of his conduct *N.L.R.B.* v. *Washington Aluminum Company, Inc.*, 370 U.S. 9, 16 (1962), citing *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938); *Ben Pekin Corporation, supra; United Stove Co.*, 245 NLRB 1402 (1979); *Modern Carpet Industries Inc.*, 236 NLRB 1014, 1015 (1978), enfd. 611 F.2d 811 (10th Cir. 1979); provided he is honestly and sincerely concerned about his safety *United Parcel Service*, 241 NLRB 1074 (1979); his complaint is not frivolous *Youngstown Sheet and Tube Company*, 235 NLRB 572 (1978); and is for "legtimate union purposes" and "not fabricated for personal motives" *N.L.R.B.* v. *Interboro Contractors Inc., supra*; or "for ulterior motives or as a pretext to achieve objectives unrelated to safety." *Wheeling-Pittsburgh Steel Corporation*, 241 NLRB 1214 (1979), enfd. in part without deciding, in view of the reasonable nature of the employee's refusal to work, whether his protection under Section 7 of the Act requires such a finding 618 F.2d 1009 (3d Cir. 1980).

In the instant case Respondent enforced a working rule against Howard to the effect that a driver who writes up a vehicle as unsafe will receive a warning letter if, upon inspection by a union mechanic, the vehicle is found to be, in fact, safe to operate. As a corollary to this rule, a finding by the inspecting mechanic that the driver was correct and the vehicle is actually unsafe to operate will result in a warning letter to the mechanic on the Safety Lane who had certified the vehicle as safe. Thus, the driver's inspection, required under DOT, is a double check as to the safety of the vehicle. The driver, however, runs the risk of possible discipline if he insists, as the parties agree he may, that a union mechanic inspect the vehicle the driver claims to be unsafe. If the driver is willing to accept the word of the garage supervisor, generally the garage foreman, that the vehicle is safe to operate the driver can avoid the possibility of receiving a warning letter.

The above working rule is generally known to Respondent's employees, including union stewards. So far as the record shows, the Union has interposed no objection to this rule and there is evidence that it has been tacitly accepted by the Union, except where it results in suspension or discharge.

It is Respondent's position that Howard acted unreasonably in refusing to accept Hartley's word that the vehicle was safe to operate and did not require the expertise of a mechanic to check it out, thereby incurring the expense of a mechanic's time and delay in transportation. I recognize that this is not a case where the employee's good faith is supported by compelling evidence that his complaint was, in fact, meritorious as in, e.g., *Roadway Express, Inc.*, 217 NLRB 278, 280 (1975),[5] enfd. 532 F.2d 751 (4th Cir. 1976); *N.L.R.B.* v. *Interboro Contractors, Inc., supra; Wheeling-Pittsburgh Steel Corporation, supra.* Indeed, the only evidence as to the unsafe condition of Howard's tractor is the opinion of Howard himself, which is refuted by testimony of Respondent's expert witnesses. Nevertheless, I cannot find, as Respondent urges, that Howard was acting in bad faith and without a sincere concern for his own safety. Howard had been employed by Respondent for 3 years and there is no evidence that he was an otherwise experienced over-the-road driver with additional years of driving and mechanical experience. It has not been shown that he was in the habit of writing up vehicles merely to harass Respondent or to waste his time and that of others. Although Hartley is a supervisor of mechanics, he is not himself a mechanic. It may well be that Howard would have been satisfied if the garage foreman, a mechanic, had inspected the vehicle and assured Howard that it was safe to operate, but that situtation, at best, is a narrow distinction and not before me.

I appreciate Respondent's concern that unnecessary writeups are a business expense which must be minimized to the extent possible. The Union, too, is at least aware of Respondent's problem and its efforts to reduce business costs by its policy on writeups. My role, however, is limited to the application of Board and court decisions, which, as set forth above, generally hold that concerted activity under Section 7 of the Act is protected where an employee in good faith refuses to operate equipment he believes to be unsafe, regardless of the merits of his complaint. If, in the interest of balancing an employer's right to conduct his business with optimum results against the right of employees to engage in concerted activity, a new approach is warranted in cases of this type that is an issue to be decided not by me, but by higher authority.

3. I conclude that Respondent did not violate Section (a)(1) of the Act in issuing a warning letter to Saint Elmo Bell, Jr., on May 8, 1979.

The General Counsel argues that Bell's conduct on the above date was protected. I cannot agree. While there are cases where crude, even insolent language of an employee during a grievance-related discussion. (see, e.g., *The Bettcher Manufacturing Corporation*, 76 NLRB 526, 527 (1948); *Socony Mobile Oil Company, Inc.*, 153 NLRB 1244 (1965); *Ryder Truck Lines Inc.*, 239 NLRB 1009 (1978), while not condoned, has been found not so egregious as to deny an employee the protection of Section 7 of the Act, this is not such a case. Bell's disrespectful remark to Wood was not made in the context of a heated discussion of the merits of Bell's grievance and was entirely unprovoked. Wood had attempted to comply with Bell's request for a union steward and told Bell that a steward was not immediately available, that Bell should drive his lift until a steward arrived. Bell's insolent

[5] Accepting, as the law of the case, the decision of the Court of Appeals for the District of Columbia on remand (*sub nom Banyard* v. *N.L.R.B., supra*), that the Board consider whether the employee's belief in the unsafe condition of his tractor was supported by "ascertainable, objective evidence" as required under the Supreme Court's interpretation of Sec. 502 (*Gateway Coal Company* v. *United Mine Workers of America, et al.*, 414 U.S. 368 (1974). Sec. 502 provides, in relevant part, that the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions of employment shall not be deemed a strike under this Act. The complaint in the instant case does not allege that Howard's conduct was protected under Sec. 502.

remark that he would get Wood's "ass" followed. Bell's contemptuous attitude toward management was revealed on the same occasion when he called Assistant Terminal Manager Abercrombie "fat boy." For this offense Bell received another warning letter not alleged by the General Counsel to be violative of Section 8(a)(1). Neither letter, in my opinion, interfered with, restrained, or coerced Bell in his right to engage in concerted activity, assuming he was engaged in such activity when he asked to see a steward and Wood replied that none was available at the time.

4. I conclude that Respondent did not violate Section 8(a)(1), (3), and (4) of the Act by the warning letters to Bell of July 26 and August 28, 1979, and in failing to pay Bell overtime for time spent in discussing his grievance.

With respect to the warning letter of July 26, Bell did not deny that he had taken a head break of 32 minutes, suggesting, in fact, that he had spent the same amount of time in the restroom on previous occasions. No evidence was offered by the General Counsel to refute testimony of Respondent's witnesses that a head break of 32 minutes was excessive. An employer is entitled to a full day's work for a full day's pay. The fact that Respondent had no published policy as to excessive time spent in the restroom will not support the charge that the letter of July 26 was issued to Bell for pretextual reasons. Certainly, Respondent's employees were aware that Respondent had a policy against wasting time, whether the time wasted involved loitering on the job or taking excessive head breaks, terminating just before a regular break period. I find that the warning letter of July 26 was issued solely for the stated reason and not as a pretext to interfere with, restrain, or coerce Bell in the exercise of his Section 7 rights.

There is not a scintilla of evidence that Respondent was motivated to discriminate against Bell because of his union membership. So far as the record shows, the relationship between the Union and Respondent is entirely amicable. They are parties to a detailed and extensive labor relations agreement, including a grievance-arbitration procedure to resolve all grievances resulting from infractions of the contract and disciplinary actions. The record is replete with evidence that all and other employees availed themselves of the services of stewards with the full cooperation of management. In these circumstances, there is no basis for concluding that Respondent violated Section 8(a)(3) by the warning letter of July 26.

The only evidence adduced by the General Counsel to support the allegation of a violation of Section 8(a)(4) is the fact that Bell was scheduled to testify at a Board hearing on July 27. This circumstance in and of itself is hardly a preponderance of evidence proving that Respondent admonished Bell not to spend excessive time in the restroom for the purpose of discriminating against him because he had filed charges and was prepared to give testimony at a Board hearing.

With respect to the warning letter of August 28, I find, essentially for the same reasons, that Bell was properly admonished through a warning letter not to be disrespectful to supervisors. Employees have rights, under the statute, to join unions, to remain union members, and to engage in concerted activity for their mutual aid and protection. Those rights are carefully guarded and protected by the Board and the courts, but they do not give an employee *carte blanche* authority to thumb his nose at his supervisor in flagrant disrespect. In little over a month Bell had told one supervisor that Bell would get his ass or put some papers on his ass and had told a higher management official that he was a fat boy. The sole discipline meted out to Bell for such disrespectful conduct were warning letters. No loss of pay was involved.

I have taken into consideration Young's remark to Bell during a discussion of the above warning letter that Bell's extracurricular activity was the problem. The General Counsel argues that this comment relates to Bell's activity in filing a charge against Respondent in Case 10-CA-14261. Young testified that his remark was based upon his knowledge that Bell worked for another trucking company on weekends and that he told Bell, when the latter asked if the comment related to Bell's going to the Labor Board, that Young was not referring to anything of that nature. I find Young's comment about Bell's extracurricular activity ambiguous. In the absence of additional probative evidence, I find it insufficient to support a conclusion that the warning letter was issued to Bell for pretextual reasons in violation of the Act.

With respect to the allegation of the complaint that Bell was discriminatorily denied overtime pay for time spent discussing his grievance after working hours, unrefuted testimony of Respondent's witnesses is that it was not the policy of Respondent to pay employees for time spent discussing a grievance beyond the regular 8-hour shift. The fact that Bell may have been paid such overtime on a previous occasion does not prove a contrary practice or warrant a finding that Respondent violated the Act by failing to pay Bell overtime on August 28.

5. I conclude that Respondent did not violate Section 8(a)(1) and (4) of the Act by issuing a warning letter to Bell on January 2, 1980.

My reasons for dismissing the 8(a)(1) and (4) allegations of the complaint relating to the warning letter of August 28, 1979, are equally applicable to the warning letter of January 2, 1980. Bell's arrogant remark to Davis, when the latter asked Bell to cease a one-sided, rambling conversation, that it was "tough shit" and Bell could say anything he wanted to was not in the context of concerted activity and did not relate to Bell's prior concerted activity. In view of Bell's pattern of engaging in disrespectful conduct toward his supervisors, it was a proper admonishment and not a pretext to punish Bell for his concerted activity or because he had filed charges and testified at a Board hearing.

6. I conclude that Respondent did not violate Section 8(a)(1) and (4) of the Act by suspending Bell on March 4, 1980, and on April 1, 1980, and finally discharging him on April 9, 1980.

With respect to the allegation that Bell was suspended and finally discharged because he filed charges with the Board and gave testimony at a Board hearing, I find, for reasons set forth above relating to the warning letter of

July 26, 1979, that the evidence is insufficient to support a violation of Section 8(a)(4).

The incident of April 1, resulting in Bell's discharge, subsequently converted to a 3-day suspension, did not involve a question of safety. He had decided, at his option, not to operate unit 3115 and had driven it a short distance to reach a third, operable unit. Davis and Harrelson were aware of the defects in unit 3115 and had accepted responsibility for it. At that point, Bell's responsibility for the unit ended. As an employee, he was not required to police Respondent's compliance with the contract. He was needed urgently at the Outbound dock. Another question would be presented if this was simply a situation where an employee asserted for the first time, even mistakenly, a debatable contract right. But Bell's conduct does not fall into that category. He searched out the cracks and crevices in Respondent's working rules to support clearly indefensible positions. Disciplined for insubordination, he argued that Respondent had no posted policy on insubordination. Similarly, he contended that he should not be warned about wasting time in the restroom because there was no posted policy for such an offense. At some point an employer need not put up with lawyering of this type. The mere assertion of a contract right does not protect otherwise unprotected conduct. Bell's insistence on April 1 that it was necessary for him to write up a forklift he had not operated and was not scheduled to operate was not an exercise of his Section 7 rights. It fits the pattern he had established of noncooperation and resistance to the instructions of his supervisors. I find he was lawfully disciplined on that occasion.

The allegation of the complaint that Respondent violated Section 8(a)(1) of the Act by suspending and finally discharging Bell as a consequence of the controversy over the safety of the forklifts assigned to him is a more serious and difficult issue. Paragraph 2 of this section sets forth the relevant Board and court decisions upon which my conclusions as to this issue must be and are based. The controlling rule of those decisions, particularly Board decisions, which I am required to follow, is that Bell was engaged in protected concerted activity if he in good faith with concern for his own safety and without ulterior motives unrelated to safety refused to operate forklifts assigned to him on the above dates.

After a careful study of the record and based upon my observation of Bell and other witnesses as they appeared before me, I conclude that Bell was not in good faith and was not solely concerned for his own safety when he challenged the safety of the forklifts he was assigned to operate.

Bell's employment history shows that he exhibited a disrespectful and insolent attitude toward his immediate supervisors and higher management officials, threatening Wood and Davis to get their "ass" and calling Abercrombie derisively "fat boy." He was particularly resentful of Davis, testifying that Davis acted aggressively on the ground that Davis, a large man, walked next to Bell and looked down on him. Yet there is no evidence that Davis did or said anything to Bell of an aggressive nature. Bell told Wood that Wood thought he was "God" and that Bell was going to show Wood and have some papers for his ass.

I cannot agree with the General Counsel that the 21 warning letters issued to Bell in 1979 and 1980 were largely pretextual resulting from the fact that Bell had filed charges against Respondent in the fall of 1978 and in 1979. Only six of those letters are alleged by the General Counsel to be unlawful and of those I have hereinabove found three to be proper, lawful warnings and a fourth to be proper discipline. Although Bell had received more than two warnings for the same offense within a 6-month period and, under Respondent's work rules, could have been discharged in 1979, Respondent took no strong action against Bell until March 1980. Even then Shepherd reduced the discharges of March 4, 1980, and April 1, 1980, to 3-day suspensions in consideration of the nature of the incidents and the fact that Bell was an 18-year employee.

Bell's concern ahout the safety of the forklifts began after the injury to his fingers on September 24, 1979. It is entirely understandable that an employee injured on the job would have a heightened awareness of the possibility of future injuries. In view, however, of Bell's conduct prior to that date and his uncompromising and uncooperative attitude in the months that followed, I cannot find that he was in good faith when he wrote up forklift after forklift, subsequently found by Respondent's union mechanics to be safe to operate.

A forklift, of course, is a hazardous piece of equipment and must be operated with extreme care under the most favorable conditions. With or without pins, the blades can slide together if they are at an angle when moving freight in or out of a trailer. Testimony of witnesses for Respondent, including its mechanics, is that the pins were for the convenience of the operator and were not in and of themselves safety matter. Obviously, too, forklifts are subject to a certain amount of normal wear and tear. The blades in a used forklift will not fit as tightly and snugly as those in a new one. These are all matters that must be taken into consideration by the operator of a forklift and the mechanics who inspect such equipment at regular intervals. This was explained to Bell, himself an experienced forklift operator, by Respondent's supervisors and mechanics.

No amount of explanation was enough to persuade Bell to cease writing up forklifts unnecessarily. He became something of an *enfant terrible* on the Atlanta dock, holding his supervisor's feet to the fire by challenging the safety of forklifts on every possible occasion. Between October 25 and December 19, 1979, he wrote up as inoperable the same forklift on four different occasions. On each occasion, the forklift was found safe and operable by Shop Foreman Mecca and mechanic Wright. He found other reasons to write up forklifts and delay the handling of freight. On six occasions between January 1 and 18, 1980, Bell noted on his writeups that the intercom was too loud. Forklifts do not carry intercoms. On one occasion Bell left the date and the number of the forklift blank on his writeup, complaining that he could not see the number on the unit in the dark at the shop area. Yet the shop area is illuminated with mercury vapor lights and a photograph of the unit shows its number clearly.

I have taken into consideration the fact that mechanic Piper had expressed concern that the Datsun forklift Bell refused to operate on March 4, 1980, was fitted with Clark blades and Piper was not sure at that time that the blades were of the proper dimension. However, this was not a matter raised by Bell as a safety issue on that date and does not relate to his good faith in challenging the safety of the forklift. Subsequently, as set forth above, Respondent investigated the issue and determined that Class 2 blades were interchangeable on a Class 2 carriage. Moreover, at least one manufacturer manufactures blades for both the Datsun and Clark forklifts.

The forklift Bell refused to operate on April 9 had just been inspected and released by the shop and Bell was so informed. It was certified by a mechanic immediately after he refused to operate it as safe and operable.

On the basis of the foregoing, I shall recommend that the allegations of the complaint as they relate to Bell be dismissed.

The unfair labor practices found above are unfair labor practices within the meaning of Section 2(2), (6), and (7) of the Act.

ORDER[6]

The Respondent, Roadway Express, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, and coercing employees in the exercise of their Section 7 rights by issuing warning letters to employees because they have pursued a grievance to a final conclusion and threatening employees with further discipline for the same conduct.

(b) Interfering with, restraining, and coercing employees in the exercise of their Section 7 rights by issuing warning letters to employees because they have in good faith refused to operate a vehicle they believe to be unsafe.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind and expunge from the personnel record of Albert T. Wilson the warning letter issued to him on September 7, 1979.

(b) Rescind and expunge from the personnel record of William Jerry Howard the warning letter issued to him on November 27, 1979.

(c) Post at its terminal in Atlanta, Georgia, copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by its representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notice is not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that Respondent violated the Act by issuing warning letters to Saint Elmo Bell, Jr., on May 8, July 26, and August 28, 1979, and January 2, 1980; by suspending Bell on March 4 and April 1, 1980; by discharging Bell on April 9, 1980; by denying Bell overtime pay for the time spent discussing a grievance; and insofar as the complaint alleges violations of the Act other than those specifically found herein.

[6] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interfere with, restrain, and coerce our employees in the exercise of their Section 7 rights by issuing warning letters to employees because they have pursued a grievance to a final conclusion and WE WILL NOT threaten employees with discipline for the same conduct.

WE WILL NOT interfere with, restrain, and coerce our employees in the exercise of their Section 7 rights by issuing warning letters to employees because they have in good faith refused to operate a vehicle they believed to be unsafe.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL rescind and expunge from the personnel record of Albert T. Wilson the warning letter issued to him on September 7, 1979.

WE WILL rescind and expunge from the personnel record of William Jerry Howard the warning letter issued to him on November 27, 1979.

ROADWAY EXPRESS, INC.